

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST SHEET METAL
ORGANIZATIONAL TRUST, et al.,

Plaintiffs,

v.

CONTROL CONNECTIONS, INC. d/b/a COIL
TECH,

Defendant.

No. C06-1839MJP

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on Plaintiffs' motion for summary judgment. (Dkt. No. 11.) Defendant has not responded, and Defendant's counsel has communicated to the Court that Defendant does not intend to file an opposition brief. Having reviewed the motion and supporting documents, and having determined that there are no genuine issues of material fact, the Court ORDERS as follows:

- 1) Plaintiffs' motion for summary judgment is granted; and
- 2) Judgment shall be entered in favor of Plaintiffs against Defendant as follows:
 - a) Forty Thousand, Six Hundred, Twenty-one and 33/100 Dollars (\$40,621.33) in employee benefit contributions due for the period November 2006 to July 2007, inclusive, with interest at the rate of 12% per annum until paid;
 - b) Sixteen Thousand, Six Hundred, Ninety-four and 29/100 Dollars (\$16,694.29) in liquidated damages for the period November 2006 through July 2007, inclusive;

Background

Plaintiffs have provided evidence showing that Coil Tech has been delinquent in its contributions. Coil Tech offers no evidence or argument suggesting otherwise. Plaintiffs' evidence shows that the amounts due in contributions, the dates those contributions were paid, if paid, liquidated damages due on unpaid or late paid contributions and interest due on unpaid or late paid contributions through September 28, 2007, are as follows:

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Month	Contributions	Liquidated Damages	Interest	Date Paid if Paid
Nov-06	6,886.53	1,275.40	98.06	2/6/2007
Dec-06	6,872.63	1,267.28	55.04	2/16/2007
Jan-07	9,222.35	1,699.11	40.88	3/7/2007
Feb-07	8,890.85	1,638.03	236.49	6/18/2007
Mar-07	8,168.16	1,504.89	243.82	7/30/2007
Apr-07	5,396.82	994.30	113.24	7/30/2007
May-07	9,785.88	1,802.93	289.22	
Jun-07	14,408.01	2,653.47	298.58	
Jul-07	20,820.24	3,858.88	237.81	
Totals Due	\$45,014.13	\$16,694.29	\$1,613.13	

(Yeager Decl. ¶ 18.) Plaintiffs have documented \$4,836.50 in attorneys' fees for the November 2006 – July 2007 period. (Brennan Decl. ¶ 3.) And Plaintiffs have offered to credit Coil Tech \$4,392.80 in overpaid contributions in September and October 2006. (Yeager Decl. ¶ 20-22.) Thus, the evidence provided shows that Defendant owes \$40,621.33 in contributions, \$16,694.29 in liquidated damages, \$1,613.13 in pre-judgment interest, and \$4,836.50 in attorneys' fees.

Discussion

Summary judgment is appropriate when there is no genuine issue as to material facts and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The party seeking summary judgment bears the initial burden of informing the court of the basis for its motion, and of identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party meets its initial burden, the opposing party must set forth specific facts showing that there is some genuine issue for trial in order to defeat the motion. Anderson v. Liberty Lobby, 477 U.S. 242, 250 (1986). Under the Court's Local Rules, if a party fails to file papers in opposition to a motion, such failure may be considered by the Court as an admission that the motion has merit. Local Civil Rule 7(2).

1 Plaintiffs seek an award for the unpaid contributions, interest accrued, liquidated damages,
2 and attorneys' fees. Those amounts are available under section 502(g)(2) of the Employee
3 Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(g)(2). That section provides that in
4 an action to recover delinquent contributions in which a judgment in favor of the plan is awarded, the
5 court shall award the plan:

6 (A) the unpaid contributions,

7 (B) interest on the unpaid contributions,

8 (C) an amount equal to the greater of -

9 (i) interest on the unpaid contributions, or

10 (ii) liquidated damages provided for under the plan in an amount not in excess of
11 20 percent (or such higher percentage as may be permitted under Federal or
12 State law) of the amount determined by the court under subparagraph (A),

13 (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

14 (E) such other legal or equitable relief as the court deems appropriate.

15 29 U.S.C. § 1132(g)(2). Section 1132(g)(2) is "mandatory and not discretionary." Northwest
16 Adm'rs, Inc. v. Albertson's, Inc., 104 F.3d 253, 257 (9th Cir. 1996). "To be entitled to a mandatory
17 award under § 1132(g)(2), the following three requirements must be satisfied: (1) the employer must
18 be delinquent at the time the action is filed; (2) the district court must enter a judgment against the
19 employer; and (3) the plan must provide for such an award." Id.

20 Here, Coil Tech was delinquent with contributions when Plaintiffs filed their complaint on
21 December 28, 2006. (See Dkt. No. 1.) The CBA and trust agreements provide for the award of the
22 unpaid contributions, liquidated damages, interest, and attorneys' fees. In addition, the Court
23 concludes that the amount of fees incurred by Plaintiffs — \$4,836.50 — is a reasonable and
24 appropriate amount. Therefore, the Court GRANTS summary judgment in favor of Plaintiffs against
25 Coil Tech for contributions remaining unpaid, liquidated damages on delinquent and unpaid
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1 contributions, pre-judgment interest, and reasonable attorneys' fees in the amounts documented by
2 Plaintiffs.²

3 **Conclusion**

4 The Court GRANTS Plaintiffs' motion for summary judgment. Judgment shall be entered in
5 favor of Plaintiffs and against Defendant for the following amounts:

- 6 (a) \$40,621.33 in employee benefit contributions, with interest at the rate of 12% per
7 annum until paid;
8 b) \$16,694.29 in liquidated damages;
9 c) \$1,613.13 in pre-judgment interest; and
10 d) \$4,836.50 in attorneys' fees.

11 The clerk is directed to send copies of this order to all counsel of record.

12 Dated this 16th day of November, 2007.

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15 Marsha J. Pechman
16 United States District Judge
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25 ² The trust agreements provide that delinquent contributions shall bear interest at the rate
26 of twelve percent (12%) interest per annum. But Plaintiffs have not provided support for any specific
interest rate to be applied to liquidated damages, pre-judgment interest, or attorneys' fees. Those
amounts shall bear interest at a rate to be calculated under 28 U.S.C. § 1961.